



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aquidneck Management Associates, Ltd.

File: B-234224; B-234224.2

Date: May 12, 1989

DIGEST

1. Protest against agency's alleged plans to make an improper sole-source award is academic where record reflects that no such award was ever made and agency has decided to utilize in-house performance of the services it requires.
2. General Accounting Office will not review allegations concerning agency plans to perform services in-house where no competitive solicitation has been issued for cost comparison purposes.

DECISION

Aquidneck Management Associates, Ltd., protests the "cancellation" by the Navy of a competitive procurement for development and maintenance services for a computer system used in support of the Trident Command and Control System Maintenance Activity. The protester contends that, in lieu of the competitive procurement, the Navy planned to fulfill its requirements by means of an illegal sole-source award to another contractor, the Electric Boat Division of General Dynamics. The protester further argues that, failing in this attempt, the agency is presently planning to perform the required services in-house in contravention of Office of Management and Budget (OMB) Circular A-76, and an internal Navy policy directive concerning computer services.

We dismiss the protest.

On May 24, 1988, the Naval Regional Contracting Center synopsized a procurement for these mainframe computer services for the Trident Command in the Commerce Business Daily (CBD). Although the notice referenced a solicitation number, N00140-88-R-2181, no solicitation was ever issued. Subsequently, the Trident Command decided to shift the

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software development and maintenance program from a mainframe computer system to a microcomputer system. In view of this change, the agency decided not to proceed with the solicitation referenced in the CBD announcement. Further, during this time the Secretary of the Navy established a policy to use in-house resources for the performance of computer services whenever possible.

As a result, the agency states that it turned to the local Navy Regional Data Automation Center which certified that it had the in-house capability to perform the services although it would likely need some contractor assistance. Accordingly, the Trident Command does not now intend to contract out for these services but to have them performed in-house by the Automation Center.

Aquidneck's initial protest filed in response to the withdrawal of the requirement outlined in the CBD notice contended that the Navy was going to award an improper sole-source contract to Electric Boat for these services. After the Navy responded that it instead intended to perform the services in-house, the protester argued that its original protest was the reason that the planned award to Electric Boat was aborted, and that it is, thus, entitled to its costs of filing and pursuing that protest issue.

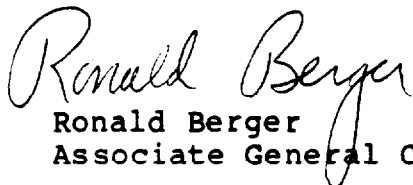
We do not agree that Aquidneck is entitled to its protest costs under its initial protest allegation. It is unnecessary for us to resolve that initial protest because no award to Electric Boat was ever made and a subsequent decision to perform the required services in-house has rendered the issue academic. We therefore dismiss this protest allegation. Thus, there is no adjudication on the merits and we will not award the costs of filing and pursuing the protest. See Teknion, Inc.--Claim for Protest Costs, B-230171.22 et al., Sept. 6, 1988, 88-2 CPD ¶ 213. Further, Aquidneck's contention that its protest caused the agency to change its plans to make award to Electric Boat is speculation and as such does not independently entitle it to costs.

Aquidneck also protests the agency's plans to perform the services in-house because, in its view, that course of action is irrational and inconsistent with OMB Circular A-76 and the Navy's recent internal directive concerning the in-house performance of computer services. In this regard, the protester indicated that the Automation Center has admitted that its performance will be partially dependent upon contractor support--a circumstance which the protester alleges cannot be cost effective when compared to performance solely by a contractor.

A decision to perform work in-house generally is a policy decision, and therefore we will not review an agency's determination to perform services in-house rather than contract them out unless the decision is based on a competitive solicitation issued for cost comparison purposes. Microphor, Inc., B-233148, Nov. 28, 1988, 88-2 CPD ¶ 521. Here, no competitive solicitation has been issued and Aquidneck's allegations concerning whether the Navy has properly determined that it has a cost effective in-house capability to perform the required services amount to nothing more than a dispute as to how the provisions of various Executive Branch policy directives should be implemented. Accordingly, the issues raised are not appropriate for our review. Id.

Moreover, we note from the record that the agency's decision-making process is still underway in this matter; the Automation Center has, to date, expressed an intention to perform the required services beginning sometime between June and October of this year, and is apparently still working with the Trident Command to develop a planning estimate detailing the precise services to be provided and their associated costs. Thus, it appears that Aquidneck is protesting anticipated agency actions which may or may not later involve the use of a competitive solicitation; its protest is, therefore, premature and not for consideration. Access Innovations, Inc., B-232510, Oct. 4, 1988, 88-2 CPD ¶ 321.

The protest is dismissed.


Ronald Berger
Associate General Counsel